

13-0192-cv

*Blue Whale Corp. v. Grand China Shipping Dev. Co., Ltd., et al.*

1  
2 UNITED STATES COURT OF APPEALS  
3  
4 FOR THE SECOND CIRCUIT  
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6

7  
8 August Term, 2012  
9

10 (Argued: April 17, 2013 Decided: July 16, 2013)  
11

12 Docket No. 13-0192-cv  
13

14  
15 BLUE WHALE CORPORATION,  
16

17 *Plaintiff-Appellant,*  
18

19 -v.-  
20

21 GRAND CHINA SHIPPING DEVELOPMENT CO., LTD.,  
22 AKA SHANGHAI GRAND CHINA SHIPPING DEVELOPMENT CO., LTD.,  
23 GRAND CHINA LOGISTICS HOLDING (GROUP) COMPANY LIMITED,  
24 HNA GROUP CO. LTD.,  
25

26 *Defendants-Appellees.*  
27  
28

29  
30  
31 Before:

32 POOLER, WESLEY, DRONEY, *Circuit Judges.*  
33

34 Plaintiff-Appellant Blue Whale Corporation ("Blue  
35 Whale") appeals from the January 11, 2013 Order by the  
36 United States District Court for the Southern District of  
37 New York (Nathan, J.) vacating its prior Rule B maritime  
38 attachment order against Defendant-Appellee HNA Group  
39 Company, Ltd. ("HNA"). Contracting parties Blue Whale and  
40 Defendant-Appellee Grand China Shipping Development Company,  
41 Ltd. ("Development") are currently engaged in arbitration in  
42 London to resolve a dispute that arose out of the parties'

1 maritime shipping contract. In anticipation of an  
2 arbitration award against Development, Blue Whale brought a  
3 Rule B claim in the Southern District of New York against  
4 Development's alleged alter ego, HNA, seeking to attach  
5 approximately \$1.3 million worth of HNA assets located in  
6 New York. The district court vacated the Rule B attachment  
7 order after Defendants-Appellees challenged the sufficiency  
8 of Blue Whale's alter-ego claim under Rule E(4)(f). The  
9 district court evaluated the prima facie validity of Blue  
10 Whale's veil-piercing claim under English law, pursuant to  
11 the choice-of-law provision in the charter party, and  
12 determined that Blue Whale had insufficiently alleged that  
13 HNA was an alter ego of Development. Because we find that  
14 Blue Whale's alter-ego claim was collateral to the  
15 contractual dispute and that English law did not govern, we  
16 apply federal maritime conflicts-of-law analysis to  
17 determine the governing law. Accordingly, we VACATE the  
18 district court's order and REMAND with instructions to re-  
19 evaluate the prima facie validity of Blue Whale's claim  
20 under federal common law.

21  
22 VACATED AND REMANDED.

23  
24  
25  
26 GEORGE M. CHALOS (Katherine N. Christodoulatos,  
27 Briton P. Sparkman, *on the brief*), Chalos &  
28 Co., P.C., Oyster Bay, NY, *for Plaintiff-*  
29 *Appellant.*

30  
31 THOMAS H. BELKNAP, JR. (W. Cameron Beard, Of  
32 Counsel, *on the brief*), Blank Rome LLP, New  
33 York, NY, *for Defendants-Appellees.*

34  
35 MICHAEL J. FREVOLA (Christopher R. Nolan, Warren  
36 E. Gluck, *on the brief*), Holland & Knight LLP,  
37 New York, NY, *for Amicus Curiae White Rosebay*  
38 *Shipping S.A.*  
39  
40

1 WESLEY, *Circuit Judge*:

2 This admiralty law dispute arises from a distinctly  
3 international transaction: a Chinese company contracted to  
4 transport goods from Brazil to China aboard a Liberian  
5 vessel. The existence of so many foreign interests yields  
6 an inherently federal choice-of-law question - one we  
7 resolve via application of maritime conflicts-of-law  
8 principles.

9  
10 **Background**

11 Plaintiff-Appellant Blue Whale Corporation ("Blue  
12 Whale"), a foreign company,<sup>1</sup> entered into a charter party (a  
13 maritime contract) with Defendant-Appellee Grand China  
14 Shipping Development Company, Ltd. ("Development"), a  
15 Chinese company, on May 25, 2011. The charter party  
16 provided for transport of 250,000 metric tons of iron ore  
17 from Brazil to China aboard a Blue Whale vessel registered  
18 in the republic of Liberia. The contract purportedly  
19 required Development to pay 98% of the total freight costs

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<sup>1</sup> Throughout this litigation, Blue Whale is identified only as a "foreign corporation." We note that Blue Whale lists a business address in Monrovia, Liberia, on a freight invoice issued to Defendant-Appellee Grand China Shipping Development Company, Ltd., and that at least one of Blue Whale's vessels is registered in Liberia.

1 to Blue Whale within seven days of loading the iron ore;  
2 allegedly, Development failed to make this payment. Blue  
3 Whale therefore held the vessel and its contents until  
4 Development satisfied the claimed debt, resulting in more  
5 than \$1 million in damages borne by Blue Whale. Blue Whale  
6 commenced arbitration against Development in London pursuant  
7 to the charter party's clause specifying that "[a]ny  
8 disputes arising under the Contract," if not settled  
9 amicably, "shall be referred to arbitration in London [with]  
10 British law to apply." The arbitration is ongoing.

11 On March 26, 2012, Blue Whale filed a complaint in the  
12 United States District Court for the Southern District of  
13 New York seeking to attach property belonging to  
14 Development's alleged alter ego, Defendant-Appellee HNA  
15 Group Company, Ltd. ("HNA"), also a Chinese company, in  
16 anticipation of a future arbitration award against  
17 Development. Rule B of the Supplemental Rules for Certain  
18 Admiralty and Maritime Claims ("Rule B") allows plaintiffs  
19 to seek an attachment of "defendant's tangible or intangible  
20 personal property - up to the amount sued for - in the hands  
21 of garnishees named in the process," "[i]f a defendant is  
22 not found within the district" at the time the complaint is

1 filed. FED. R. CIV. P. SUPP. R. B(1)(a). Blue Whale alleged  
2 that Development and HNA "are in fact a single business  
3 enterprise" and that the district court should allow Blue  
4 Whale to pierce the corporate veil to reach in-district HNA  
5 assets of approximately \$1.3 million.

6 On May 17, 2012, the district court (Nathan, J.) issued  
7 an order authorizing attachment of HNA's holdings in third-  
8 party Pacific American Corporation - a privately-held direct  
9 subsidiary of HNA based in New York - in an amount up to  
10 approximately \$1.3 million. HNA subsequently moved to  
11 vacate the district court's maritime attachment order under  
12 Rule E(4)(f), which provides that a person claiming interest  
13 in attached property "shall be entitled to a prompt hearing  
14 at which the plaintiff shall be required to show why the  
15 arrest or attachment should not be vacated." FED. R. CIV. P.  
16 SUPP. R. E(4)(f).

17 Under Rule B, attachment is only appropriate if, *inter*  
18 *alia*, the plaintiff has a valid prima facie admiralty claim  
19 against the defendant. Neither party disputed that Blue  
20 Whale had alleged a claim sounding in admiralty and that the  
21 court had maritime jurisdiction. However, the parties  
22 disagreed over what substantive body of law controlled

1 whether Blue Whale had alleged a valid prima facie claim to  
2 pierce the corporate veil. HNA argued that English law  
3 governed pursuant to the charter party's choice-of-law  
4 provision and that Blue Whale had failed to allege  
5 sufficient facts to support a prima facie alter-ego claim.  
6 In response, Blue Whale argued that federal common law  
7 controlled the inquiry because Rule B is procedural in  
8 nature and, in addition, because "it is well-settled that  
9 'federal courts sitting in admiralty must apply federal  
10 common law when examining corporate identity.'" <sup>2</sup> Memorandum  
11 of Law in Opposition to Motion to Vacate Maritime Rule B  
12 Attachment, at 8-9, *Blue Whale Corp. v. Grand China Shipping*  
13 *Dev. Co., Ltd., et al.*, No. 12 Civ. 02213 (AJN) (S.D.N.Y.  
14 2012).

15 The district court separately analyzed the two elements  
16 required for Blue Whale's claim: (1) whether the claim  
17 sounded in admiralty; and (2) whether the claim was prima  
18 facie valid. First, the court held that whether Blue Whale

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<sup>2</sup> Apparently, neither party raised the issue of whether HNA (a non-signatory to the charter party between Blue Whale and Development) could be bound by the English choice-of-law clause. As the district court noted, there are cases that speak to this issue and find that courts may force non-signatories to adhere to choice-of-law clauses. See, e.g., *FR 8 Singapore Pte. Ltd. v. Albacore Maritime Inc.*, 754 F. Supp. 2d 628, 636 (S.D.N.Y. 2010).

1 adequately pled an admiralty claim was a procedural question  
2 governed by federal maritime law because it related to the  
3 court's subject matter jurisdiction (a point not disputed by  
4 the parties). The court therefore exercised maritime  
5 jurisdiction over the claim. Second, the district court  
6 held that the substantive question of whether Blue Whale had  
7 pled a valid prima facie alter-ego claim was controlled by  
8 English law pursuant to the contractual choice-of-law  
9 provision. Under English law, the court concluded that Blue  
10 Whale had not alleged an adequate prima facie claim to  
11 pierce the corporate veil, and therefore vacated the  
12 attachment.<sup>3</sup>

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<sup>3</sup>The district court also made an alternative ruling supporting vacatur. Under Rule B, attachment is impermissible if a defendant can be "found" within the district. FED. R. CIV. P. SUPP. R. B(1)(a); see also *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434, 445 (2d Cir. 2006), overruled on other grounds by *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58 (2d Cir. 2009). Because HNA had registered to do business in New York State after the district court issued the Rule B attachment order, the district court reasoned that HNA could now be "found" in the district and that vacatur was appropriate under Rule E. On this basis, the court also denied Blue Whale's request to stay its decision and grant Blue Whale an opportunity to obtain limited discovery and to amend its complaint.

Both Blue Whale and HNA recognize that the district court erred by finding that HNA's post-attachment registration to do business in New York State undermined Blue Whale's basis for a Rule B attachment order. See *ProShipLine, Inc. v. Aspen Infrastructures, Ltd.*, 585 F.3d 105, 112 n.4 (2d Cir. 2009) ("The time for determining whether a defendant is 'found' in the district is set at the time of the filing of the verified

1 Supported by Amicus Curiae White Rosebay Shipping S.A.  
 2 ("White Rosebay"),<sup>4</sup> Blue Whale appeals from the district  
 3 court's January 11, 2013 order vacating the prior Rule B  
 4 maritime attachment order against HNA.

### 6 Discussion

7 "We review a district court's decision to vacate a  
 8 maritime attachment for abuse of discretion; however, we  
 9 review de novo any legal determinations on which this  
 10 discretion rests." *Williamson v. Recovery Ltd. P'ship*, 542  
 11 F.3d 43, 48 (2d Cir. 2008). This Court has interpreted Rule  
 12 B to permit a plaintiff to obtain an order of attachment if  
 13 it can show that

- 14 1) it has a valid prima facie admiralty
- 15 claim against the defendant; 2) the
- 16 defendant cannot be found within the
- 17 district; 3) the defendant's property may
- 18

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complaint that prays for attachment and the affidavit required by Rule B(1)(b)."); see also *Marimed Shipping Inc. v. Persian Gulf Shipping Co. Inc.*, 567 F. Supp. 2d 524, 527 (S.D.N.Y. 2008). HNA could not be "found" within the district for purposes of Rule B attachment because the text of the rule itself establishes that a defendant is "found within the district when a verified complaint . . . [is] filed." FED. R. CIV. P. SUPP. R. B(1)(a) (emphasis added). Thus, the district court's alternative basis for vacating the attachment order fails as a matter of law.

<sup>4</sup>White Rosebay's interest in this appeal stems from its separate commencement of two admiralty veil-piercing actions against HNA (and other parties).



1 be found within the district; and 4)  
2 there is no statutory or maritime law bar  
3 to the attachment.  
4

5 *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d  
6 434, 445 (2d Cir. 2006), overruled on other grounds by  
7 *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*,  
8 585 F.3d 58 (2d Cir. 2009). If a plaintiff fails to make  
9 this showing when challenged under Rule E, a district court  
10 must vacate the prior order of attachment. *Id.*

11 The principal issue on appeal is whether Blue Whale  
12 satisfied its burden of pleading a valid prima facie  
13 admiralty claim against HNA in satisfaction of the first  
14 prong of *Aqua Stoli*. As the district court recognized, this  
15 evaluation requires us to answer two questions: (1) whether  
16 Blue Whale's claim against HNA sounds in admiralty; and (2)  
17 whether the claim is prima facie valid. Each of these  
18 questions, in turn, necessitates determining the governing  
19 body of law. For the reasons explained below, we conclude  
20 that the district court properly applied federal maritime  
21 law to the procedural question of whether Blue Whale's claim  
22 sounds in admiralty, and we agree that the claim does sound  
23 in admiralty because it arose out of a maritime contract.  
24

1           We also agree with the district court that the issue of  
2   the claim's prima facie validity is a substantive inquiry.  
3   We conclude, however, that the district court's application  
4   of English law to this question was improper because the  
5   charter party's choice-of-law provision does not govern Blue  
6   Whale's collateral alter-ego claim against HNA. Instead, we  
7   draw on maritime choice-of-law principles to hold that  
8   although federal common law does not govern every claim of  
9   this nature, federal common law does apply here, primarily  
10   because of the collateral claim's close ties to the United  
11   States. We remand for reconsideration by the district court  
12   of the prima facie validity of Blue Whale's alter-ego claim  
13   under federal common law.

14  
15   **I. The Rule B Inquiry Is Procedural in Part and Substantive**  
16   **in Part**

17  
18           "There is a split of authority" in the Southern  
19   District of New York on the issue of what law governs  
20   "whether [a] plaintiff has pled a facially valid admiralty  
21   claim . . . and the Second Circuit has not ruled on it." *Al*  
22   *Fatah Int'l Nav. Co. Ltd. v. Shivsu Canadian Clear Waters*  
23   *Tech.(P) Ltd.*, 649 F. Supp. 2d 295, 299 (S.D.N.Y. 2009).  
24   Some district courts within this Circuit presume that

1 "federal law governs all questions concerning the validity  
 2 of a Rule B attachment." *Harley Mullion & Co. Ltd. v.*  
 3 *Caverton Marine Ltd.*, No. 08-cv-5435 (BSJ), 2008 WL 4905460,  
 4 at \*2 (S.D.N.Y. Aug. 7, 2008) (assessing whether plaintiffs  
 5 pled a valid maritime claim).<sup>5</sup> Other district courts reason  
 6 that despite Rule B's "undoubted[]" status as a procedural  
 7 rule, "Rule B itself does not provide the basis for  
 8 determining the existence of a valid prima facie admiralty  
 9 claim," and instead, "the existence of a valid prima facie  
 10 claim turns on substantive law." *Al Fatah*, 649 F. Supp. 2d  
 11 at 300.<sup>6</sup>

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<sup>5</sup> See also *Emeraldian Ltd. P'ship v. Wellmix Shipping Ltd.*, No. 08 Civ. 2991 (RJH), 2009 WL 3076094, at \*2-3 (S.D.N.Y. Sep. 28, 2009) (applying federal common law without discussion of English choice-of-law clause in charter party); *Euro Trust Trading S.A. v. Allgrains U.K. Co.*, No. 09 Civ. 4483 (GEL), 2009 WL 2223581, at \*2-3 (S.D.N.Y. July 27, 2009) (agreeing that "the better view is that federal law governs all questions concerning the validity of a Rule B attachment," but specifically deciding that federal law governs whether plaintiff alleged a valid maritime claim (internal quotation marks omitted)); *Budisukma Permai SDN BHD v. N.M.K. Prods. & Agencies Lanka (Private) Ltd.*, 606 F. Supp. 2d 391, 395-96 (S.D.N.Y. 2009) (discussing choice of law in the context of deciding whether plaintiff had a valid maritime claim).

<sup>6</sup> See also *Indagro S.A. v. Bauche S.A.*, 652 F. Supp. 2d 482, 489-90 & 490 n.9 (S.D.N.Y. 2009) (outlining the dispute and finding that law of the contract governs whether plaintiff pled a valid prima facie claim and federal law governs whether that claim sounds in admiralty); *Kulberg Fins. Inc. v. Spark Trading D.M.C.C.*, 628 F. Supp. 2d 510, 515, 518-19 (S.D.N.Y. 2009) (endorsing "numerous courts[]" view that "existence of a valid prima facie admiralty claim turns on the . . . law of the contract"); *Precious Pearls, Ltd. v. Tiger Int'l Line Pte Ltd.*,

1           *A. Whether a Claim Sounds in Admiralty Is a Procedural*  
 2           *Question Governed by Federal Maritime Law*

3  
 4           Despite the divide, what is clear is that federal law  
 5 controls the procedural inquiry, namely, whether a  
 6 plaintiff's claim sounds in admiralty. See *id.* at 299 n.4;  
 7 *Euro Trust Trading S.A. v. Allgrains U.K. Co.*, No. 09 Civ.  
 8 4483 (GEL), 2009 WL 2223581, at \*3 (S.D.N.Y. July 27, 2009).  
 9 This question is inherently procedural by virtue of its  
 10 relationship to the courts' subject matter jurisdiction and,  
 11 thus, is controlled by federal maritime law. Here, the  
 12 parties do not dispute that Blue Whale's claim sounds in  
 13 admiralty because it arises out of a maritime contract.  
 14 The more difficult question is whether federal law also  
 15 controls a court's assessment of the validity of a  
 16 plaintiff's prima facie claim.

17           *B. Whether a Claim Is Prima Facie Valid Is a*  
 18           *Substantive Question Governed by the Relevant*  
 19           *Substantive Law*

20  
 21           If the prima facie validity component of the inquiry is

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No. 07 Civ. 8325 (JGK), 2008 WL 3172998, at \*2 (S.D.N.Y. July 31, 2008) (without discussion, applying English law pursuant to contract clause to assess whether contingent indemnity claim was ripe); *Sonito Shipping Co., Ltd. v. Sun United Maritime Ltd.*, 478 F. Supp. 2d 532, 536 (S.D.N.Y. 2007) ("The existence vel non of a valid maritime claim for purposes of a Rule B writ of attachment turns upon the applicable substantive law, in this case the law of contract.").

1 procedural in nature, federal law will control; if it is  
2 substantive, the relevant substantive body of law will  
3 control. The district courts in the Southern District of  
4 New York have laid out the competing arguments for us. In  
5 *Harley Mullion & Co. Ltd. v. Caverton Marine Ltd.*, the court  
6 explained its reasoning for finding that "the better view is  
7 that federal law governs all questions concerning the  
8 validity of a Rule B attachment" as follows:

9 If, in order to comply with the  
10 requirements set forth in *Aqua Stoli*, a  
11 claim must be valid under the substantive  
12 law that will govern the underlying  
13 action, parties initiating or responding  
14 to a Rule 4(E) [sic] challenge would be  
15 routinely required to litigate issues of  
16 foreign law and courts would have to  
17 probe into the merits of the underlying  
18 claim. This sort of detailed examination  
19 is inappropriate at a Rule 4(E) [sic]  
20 hearing as it would undermine the prima  
21 facie standard and is at odds with the  
22 limited inquiry contemplated by *Aqua*  
23 *Stoli*.

24  
25 No. 08-cv-5435 (BSJ), 2008 WL 4905460, at \*2 (S.D.N.Y. Aug.  
26 7, 2008) (internal quotation marks omitted). By contrast,  
27 in *Al Fatah*, the district court rejected this  
28 position because

29  
30 Rule B itself does not provide the basis  
31 for determining the existence of a valid  
32 prima facie admiralty claim. . . . [T]he  
33 existence of a valid prima facie claim  
34 turns on substantive law. Where the

1 substantive law underlying the claim is  
2 foreign, it would make no sense to  
3 determine the claim's prima facie  
4 validity under U.S. law.  
5

6 649 F. Supp. 2d at 300. Then-District Judge Chin further  
7 explained that his "conclusion [was] not inconsistent with  
8 *Aqua Stoli*[]" because even if an inquiry conducted under  
9 foreign law might be "more difficult" than the same  
10 assessment under United States law, "it need not necessarily  
11 be any more rigorous." *Id.*

12 We agree with Judge Chin's reasoning. Admiralty law  
13 provides the remedy; substantive law defines the right to  
14 the remedy. Assessing the prima facie validity of a claim  
15 is a substantive inquiry that should be governed by the  
16 relevant substantive law. By contrast, whether a claim  
17 sounds in admiralty is a procedural question, the answer to  
18 which supplies the source of a court's subject matter  
19 jurisdiction.

20 As the district court here recognized, the decisions  
21 incorporating the reasoning in *Harley Mullion* typically do  
22 so in the context of resolving a dispute over whether a  
23 plaintiff has sufficiently alleged an *admiralty* claim - not  
24 whether a plaintiff has pled a *valid prima facie claim*. See  
25 *Indagro S.A. v. Bauche S.A.*, 652 F. Supp. 2d 482, 490

1 (S.D.N.Y. 2009) ("Where the question is not whether the  
2 claim is maritime in nature, but rather whether the  
3 plaintiff has pled a 'valid' claim at all, courts in this  
4 District have considered whether the plaintiff alleged a  
5 prima facie claim under the substantive law governing the  
6 parties' dispute."). As a result, in these cases,  
7 statements to the effect that all Rule B queries are  
8 procedural in nature and are governed by federal law  
9 effectively constitute dicta - no one disagrees that federal  
10 law controls the determination of whether a claim sounds in  
11 admiralty.

12 We hold that federal maritime law governs whether a  
13 claim sounds in admiralty and that the relevant substantive  
14 law governs whether a plaintiff has alleged a valid prima  
15 facie claim. We use substantive law to assess the prima  
16 facie validity of a plaintiff's claim because substantive  
17 law supplies the relevant measure for deciding whether or  
18 not the claim is legally sufficient. Of course, this means  
19 that courts must apply the correct substantive law - i.e.,  
20 the law which defines the rights and responsibilities of the  
21 parties to the dispute. This introduces the more difficult  
22 question in this case: what substantive law controls the  
23 validity of Blue Whale's alter-ego claim?

1 **II. Federal Maritime Choice-of-Law Analysis Determines the**  
2 **Relevant Substantive Law**

3 There are three approaches for evaluating what law  
4 governs Blue Whale's alter-ego claim in this case: invoking  
5 the charter party's choice-of-law provision, which specifies  
6 English law; automatically applying federal common law  
7 because the court is "examining corporate identity"; or  
8 engaging in a federal maritime choice-of-law analysis.  
9 Because we find that the charter party's choice-of-law  
10 clause does not govern this collateral alter-ego claim, we  
11 hold that federal maritime choice-of-law principles dictate  
12 the proper controlling substantive law. In this case, a  
13 maritime choice-of-law analysis yields federal common law as  
14 the relevant governing law by virtue of the claim's  
15 connection to the United States.

16 *A. The Contractual Choice-of-Law Clause Does Not*  
17 *Control Because the Alter-Ego Claim Is Collateral*

18  
19 First, we reject HNA's contention, and the district  
20 court's conclusion, that the charter party's choice-of-law  
21 clause requires applying English substantive law to govern  
22 this dispute. *Kalb, Voorhis & Co. v. American Financial*  
23 *Corp.*, 8 F.3d 130, 132 (2d Cir. 1993), teaches us that  
24 choice-of-law clauses in underlying contracts are



1 "irrelevant" to assessing alter-ego claims. In that case,  
2 Kalb, the plaintiff, held debentures (collateral-free debts  
3 or notes) issued by third-party corporation Circle K. *Id.*  
4 at 131. After Circle K filed for bankruptcy under Chapter  
5 11, Kalb sued as a creditor of Circle K to pierce the  
6 corporate veil and impose liability for the debentures on  
7 the defendant, a former controlling stockholder of Circle K.  
8 *Id.* Shortly thereafter, Circle K asserted its own rights to  
9 pierce the veil against the defendant; the question in the  
10 case was "whether a claim alleging that the debtor or  
11 bankrupt is the alter ego of its controlling stockholder"  
12 belonged to Circle K or Kalb. *Id.* at 132.

13 In considering the choice of law in this diversity  
14 case, we determined that it was appropriate to apply the  
15 choice-of-law principles of the forum state (New York)  
16 rather than relying on the choice-of-law clause in the  
17 debentures. *Id.* We noted that "[t]he choice of law  
18 provisions in the debentures [were] irrelevant [because t]he  
19 issue is the limited liability of shareholders of a  
20 corporation - not Circle K's obligations under the  
21 debentures." *Id.*

22 Similarly, here the issue is HNA's legal status as an  
23 alter ego of Development, not the obligations under or

1 subsequent alleged violations of the charter party between  
2 Development and Blue Whale. Blue Whale's claim against HNA  
3 sounds in admiralty because it arose from this maritime  
4 contract - however, the substance of the attachment claim  
5 concerns whether HNA is an alter ego of Development. This  
6 corporate identity inquiry is indeed distant from the  
7 dispute over the charter party's provisions regarding the  
8 transport of iron ore. For this reason, we find that "the  
9 issue of piercing the corporate veil is collateral to the  
10 contract, and thus this Court is not bound by the choice of  
11 law provision." *United Trade Assocs. Ltd. v. Dickens &*  
12 *Matson (USA) Ltd., Inc.*, 848 F. Supp. 751, 759 (E.D. Mich.  
13 1994); *see also Wehlage v. EmpRes Healthcare Inc.*, 821 F.  
14 Supp. 2d 1122, 1127-28 (N.D. Cal. 2011); *JSC Foreign*  
15 *Economic Ass'n Technostroyexport v. Int'l Dev. and Trade*  
16 *Servs., Inc.*, 295 F. Supp. 2d 366, 385-86 (S.D.N.Y. 2003)  
17 (determining that action to enforce judgment was "in no way  
18 connected to or related to the performance of the shipment  
19 contracts" and that arbitration clause did not govern).<sup>7</sup>

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<sup>7</sup> There are a number of cases that indicate that had Blue Whale prevailed at the London arbitration proceeding in advance of bringing an action for attachment or enforcement in the United States, federal common law and not English law would govern the court's evaluation of HNA's alleged alter-ego status. *See, e.g., Bidas S.A.P.I.C. v. Gov. of Turkmenistan*, 345 F.3d 347, 353,

1        *B. Federal Common Law Does Not Apply Automatically for*  
 2        *"Examining Corporate Identity"*

3  
 4        Second, we reject the proposition advanced by Blue  
 5        Whale and White Rosebay that federal common law  
 6        *automatically* governs the alter-ego claim. Blue Whale and  
 7        Amicus Curiae White Rosebay cite numerous cases for the  
 8        proposition that

9                courts in this Circuit have consistently  
 10                held . . . [that] '[f]ederal courts  
 11                sitting in admiralty must apply federal  
 12                common law when examining corporate  
 13                identity.'

14  
 15        *Clipper Wonsild Tankers Holding A/S v. Biodiesel Ventures,*  
 16        *LLC*, 851 F. Supp. 2d 504, 507-08 (S.D.N.Y. 2012) (quoting *In*  
 17        *re Holborn Oil Trading Ltd.*, 774 F. Supp. 840, 844 (S.D.N.Y.  
 18        1991)).<sup>8</sup> However, many of these cases, as well as matters

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358-60 (5th Cir. 2003) (remanding after applying federal common law instead of contractually-specified English law to determine whether Government of Turkmenistan was subject to arbitration, and thus liable for arbitration award, as alleged alter ego of contracting party) (*cited favorably in Compagnie Noga D'Importation et D'Exportation, S.A. v. Russian Federation*, 361 F.3d 676, 686 (2d Cir. 2004)).

<sup>8</sup> See also *Constellation Energy Commodities Grp. Inc. v. Transfield ER Cape Ltd.*, 801 F. Supp. 2d 211, 223 (S.D.N.Y. 2011) (applying federal common law to evaluate plaintiff's claim to enforce arbitration award against alleged alter-ego defendants); *Emeraldian*, 2009 WL 3076094, at \*2-3 (applying federal common law to assess validity of plaintiff's prima facie alter-ego maritime claim without discussing applicability of English choice-of-law provision); *Arctic Ocean Int'l Ltd. v. High Seas Shipping Ltd.*, 622 F. Supp. 2d 46, 53 (S.D.N.Y. 2009) (same).

1 cited more broadly in support,<sup>9</sup> are focused principally on  
2 the scope of courts' admiralty jurisdiction, rather than on  
3 the source of substantive law. Admiralty jurisdiction and  
4 federal maritime law need not go hand-in-hand, see, e.g.,  
5 *Lauritzen v. Larsen*, 345 U.S. 571 (1953), even in the  
6 context of examining corporate identity.

7 It appears that this Court's decision in *Kirno Hill*  
8 *Corp. v. Holt*, 618 F.2d 982 (2d Cir. 1980) (per curiam), is  
9 at the root of the principle that federal common law governs  
10 the analysis of corporate identity. *Kirno Hill* did not  
11 involve Rule B, a contract specifying choice of law,  
12 international parties or contracts, or, in fact, any quarrel  
13 over choice of law. Instead, the case centered around a  
14 dispute over personal liability for obligations under a  
15 charter party. *Id.* at 984. We applied federal maritime  
16 law, "which is the law we apply in an admiralty case," to

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<sup>9</sup> See *Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.*, 339 U.S. 684 (1950); *Williamson*, 542 F.3d at 49-50; see also *Williamson v. Recovery Ltd. P'ship*, No. 06 Civ. 5724 (LTS)(FM), 2007 WL 102089, at \*2 (S.D.N.Y. Jan. 16, 2007) ("The choice of law clauses, whatever their significance in the ultimate determination of the merits of the dispute, do not divest the federal court of subject matter jurisdiction."); see also *Budisukma*, 606 F. Supp. 2d 391 (adopting *Harley Mullion* analysis to decide primary issue of whether plaintiff's claim was maritime in nature and not specifying whether reasoning for applying federal common law, instead of English law, to assess validity of alter-ego claims was on a similar basis).

1 determine whether an undisclosed principal was bound by  
2 contracts made by an agent acting within his authority. *Id.*  
3 at 985.

4 Subsequent cases citing *Kirno Hill* for the proposition  
5 that federal common law dictates whether or not a maritime  
6 plaintiff has sufficiently pled a claim to pierce the  
7 corporate veil tend to proceed along one of two lines.  
8 First, there are cases like *Clipper Wonsild Tankers Holding*  
9 *A/S v. Biodiesel Ventures, LLC*, 851 F. Supp. 2d 504  
10 (S.D.N.Y. 2012), opining that courts must choose between  
11 state law and federal common law. In *Clipper*, alleged  
12 alter-ego defendants argued that plaintiffs' Rule B claims  
13 should be governed by Texas law because of the parties'  
14 diversity and defendants' status as Texas corporations. *Id.*  
15 at 506-07. The district court disagreed because plaintiffs  
16 had expressly (and properly) invoked the court's admiralty  
17 jurisdiction since a charter party lay at the center of the  
18 dispute. *Id.* at 507-08. This result strikes us as correct.  
19 When the choice is between state law and federal common law,  
20 the federal interest in maintaining uniformity in the  
21 quintessentially federal realm of admiralty supersedes any  
22 competing interest in applying state law. *See generally Am.*  
23 *Dredging Co. v. Miller*, 510 U.S. 443 (1994).

1 Second, there are Rule B attachment cases in which  
2 district courts must grapple with foreign parties' disputes  
3 that arose (or sometimes sank) in foreign waters. In *Arctic*  
4 *Ocean International, Ltd. v. High Seas Shipping Ltd.*, 622 F.  
5 Supp. 2d 46 (S.D.N.Y. 2009), for example, a Russian  
6 plaintiff-company secured a Rule B attachment order in the  
7 Southern District of New York against a Marshall Islands  
8 defendant-company and an alleged alter-ego Canadian  
9 defendant-company. *Id.* at 47-48. In evaluating the alleged  
10 alter ego's attack on the attachment order,<sup>10</sup> the district  
11 court assessed the prima facie validity of plaintiff's  
12 alter-ego claim under federal common law. *Id.* at 53-56.  
13 The district court applied federal common law instead of  
14 Russian law, Marshall Islands law, Canadian law or English  
15 law (which was specified by the charter party's arbitration  
16 choice-of-law provision, *id.* at 48) because "federal courts  
17 sitting in admiralty have tended to apply federal maritime  
18 common law," *id.* at 53 (citing *In re Holborn*, 774 F. Supp.  
19 at 844).

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<sup>10</sup> The alleged alter-ego defendant moved to dismiss the complaint under Rules 12(b)(2) and 12(b)(6) rather than challenging the attachment under Rule E(4)(f) because no property had actually been attached in the approximately eleven months that the Rule B order had been in force. *Arctic Ocean*, 622 F. Supp. 2d at 50. However, as the district court recognized, defendant's arguments "would have similar force at a Rule E(4)(f) hearing." *Id.*

1           Although the district court may well have reached the  
2 correct result in *Arctic Ocean*, we do not believe that *Kirno*  
3 *Hill* (or its progeny) compels courts "examining corporate  
4 identity" to apply federal common law. That said, we  
5 recognize that district courts frequently have found value  
6 in using federal common law to evaluate the validity of  
7 collateral claims in Rule B attachment proceedings. Our aim  
8 today is to clarify that the decision of which body of law  
9 to apply should be the product of a maritime choice-of-law  
10 analysis.

11           *C. Maritime Choice-of-Law Analysis Shows that Federal*  
12           *Common Law Controls Because United States Law Has the*  
13           *Strongest Connection to the Relevant Transaction*  
14

15           The Supreme Court first announced the maritime  
16 conflicts-of-law test in *Lauritzen v. Larsen*, 345 U.S. 571  
17 (1953). "The rule of *Klaxon Co. v. Stentor Electric Mfg.*  
18 *Co.*[], under which a federal court exercising its diversity  
19 jurisdiction looks to the choice-of-law doctrine of the  
20 forum state, does not govern suits invoking the court's  
21 admiralty jurisdiction." *Itel Containers Int'l Corp. v.*  
22 *Atlanttrafik Exp. Serv. Ltd.*, No. 86 Civ. 1313 (RLC), 1988  
23 WL 75262, at \*2 (S.D.N.Y. July 13, 1988). Thus, when  
24 parties properly invoke admiralty jurisdiction, courts apply  
25 federal maritime choice-of-law rules. *Id.*

1 In *Lauritzen*, a Danish seaman brought suit in the  
2 Southern District of New York under the Jones Act, 46 U.S.C.  
3 § 688, alleging that he was negligently injured aboard a  
4 ship of Danish flag and registry while in Havana harbor.  
5 345 U.S. at 573. The ship was owned by a Danish citizen,  
6 and the injured seaman had signed the ship's articles  
7 providing that disputes would be governed by Danish law.  
8 *Id.* Nevertheless, he sought to invoke United States law.  
9 *Id.*

10 Recognizing that "[m]aritime law . . . has attempted to  
11 avoid or resolve conflicts between competing laws by  
12 ascertaining and valuing points of contact between the  
13 transaction and the states or governments whose competing  
14 laws are involved," *id.* at 582, the Supreme Court laid out a  
15 multi-factor choice-of-law test,<sup>11</sup> "[t]he purpose of [which]

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<sup>11</sup> Supplemented by subsequent case law, the non-exhaustive list of factors includes: "(1) the place of the wrongful act; (2) the law of the ship's flag; (3) the domicile of the injured party; (4) the domicile of the shipowner; (5) the place of the contract; (6) the inaccessibility of the foreign forum; (7) the law of the forum; and (8) the shipowner's base of operations." *Carbotrade S.p.A. v. Bureau Veritas*, 99 F.3d 86, 90 (2d Cir. 1996) (citing *Hellenic Lines Ltd. v. Rhoditis*, 398 U.S. 306, 309 (1970); *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 382 (1959); *Lauritzen*, 345 U.S. at 583-92). Though the *Lauritzen* factors speak more directly to tort claims, a modified framework may be invoked in contract actions. See *Rainbow Line, Inc. v. M/V Tequila*, 480 F.2d 1024, 1026-27 (2d Cir. 1973); see also *Itel Containers*, 1988 WL 75262, at \*2.



1 is to assure that a case will be treated n [sic] the same  
2 way under the appropriate law regardless of the fortuitous  
3 circumstances which often determine the forum," *id.* at 591.  
4 In *Lauritzen*, the balance of factors clearly pointed to  
5 application of Danish law: the injured seaman had minimal  
6 contacts with the United States beyond the intangible - his  
7 desire to invoke this nation's more favorable maritime tort  
8 law. *Id.* at 592.

9 Here, by contrast, Blue Whale initiated this proceeding  
10 in the United States, and specifically in the Southern  
11 District of New York, because that is where HNA owns  
12 property. Blue Whale did not invoke the Southern District  
13 of New York's admiralty jurisdiction by serendipity - the  
14 presence of HNA's property enabled this action and, along  
15 with it, the application of federal maritime law.  
16 Furthermore, the basic tenet upon which *Lauritzen* is  
17 premised will be satisfied here by using federal common law  
18 because its application reflects an implicit "resol[ution  
19 of] conflicts between competing laws by ascertaining and  
20 valuing points of contact between the transaction and the  
21 states or governments whose competing laws are involved."  
22 *Id.* at 582.

1 As is often the case in admiralty, we deal here with  
2 multi-national foreign parties locked in dispute as the  
3 result of an alleged breach of an international shipping  
4 contract. Indeed, part of the reason we authorize maritime  
5 attachment is the "peripatetic" nature of maritime parties,  
6 the "transitory" status of their assets, *Aqua Stoli*, 460  
7 F.3d at 443, and the need for parties to obtain security  
8 "[i]n a world of shifting assets, numerous  
9 thinly-capitalized subsidiaries, flags of convenience and  
10 flows of currencies," *Navalmar (U.K.) Ltd. v. Welspun*  
11 *Gujarat Stahl Rohren, Ltd.*, 485 F. Supp. 2d 399, 404  
12 (S.D.N.Y. 2007) (citing *Aurora Maritime v. Abdullah Mohamed*  
13 *Fahem & Co.*, 84 F.3d 44 (2d Cir. 1996)).

14 This particular case arose from a charter party between  
15 a Chinese company, Development, and another foreign company,  
16 Blue Whale, to ship iron ore from Brazil to China on a  
17 Liberian vessel. This narrative yields several potential  
18 sources of law; none have a particularly strong connection  
19 to the transaction. The facts here contrast strongly with  
20 the facts in *Lauritzen*, where all parties, the ship, and the  
21 contract itself exhibited strong ties to Denmark. 345 U.S.  
22 at 573.

1           Importantly, however, the relevant "transaction" in  
2   this case is *not* Development's alleged failure to comply  
3   with the charter party - it is Blue Whale's claim to pierce  
4   the corporate veil. The district court in this Rule B  
5   action is charged only with determining whether Blue Whale  
6   stated a prima facie valid alter-ego claim against HNA in  
7   furtherance of its motion to attach HNA's property in New  
8   York. Accordingly, United States law has the strongest  
9   "points of contact" with this claim by virtue of the  
10   location of HNA's property, Blue Whale's corresponding  
11   choice of forum and the unavailability of an alternative  
12   forum, and the absence of a dominant foreign choice of law.

13           On a final note, we recognize the value of simplifying  
14   the judicial process required for Rule B attachments and  
15   Rule E motions to vacate when feasible. *See generally Aqua*  
16   *Stoli*, 460 F.3d at 443-44. As we have articulated, this  
17   does not excise the judicial obligation to apply the  
18   governing substantive law to assess the prima facie validity  
19   of a Rule B admiralty claim when challenged in a Rule E  
20   proceeding. But here, for the reasons discussed, we  
21   identify federal common law as the proper substantive body  
22   of law to govern Blue Whale's alter-ego claim against HNA.  
23   This follows from the ideas underpinning the *Lauritzen*

1 choice-of-law analysis and from our aim of ensuring  
2 uniformity in admiralty law whenever possible. Accordingly,  
3 we vacate the district court's order and remand for  
4 reconsideration of the prima facie validity of Blue Whale's  
5 Rule B alter-ego claim under federal common law. See  
6 *Williamson*, 542 F.3d at 53; *Clipper*, 851 F. Supp. 2d at 509-  
7 10.

### 8 **Conclusion**

9 For the foregoing reasons, the order of the district  
10 court is hereby VACATED and REMANDED.